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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/964,100	09/26/2001	Ikuo Ozawa	4041K-000036	3018

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EXAMINER

CIRIC, LJILJANA V

ART UNIT	PAPER NUMBER
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3743

DATE MAILED: 07/16/2003

121

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.  
09/964,100

Applicant(s)  
Ozawa et al.

Examiner

Ljiljana V. Ciric

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on Jun 16, 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1, 3, 4, and 6-15 is/are pending in the application.
- 4a) Of the above, claim(s) none is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1, 3, 4, and 6-15 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claims \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on Sep 26, 2001 is/are a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☒ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☒ All b) ☐ Some\* c) ☐ None of:  
1. ☒ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\*See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).  
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s). \_\_\_\_\_ 6) ☐ Other: \_\_\_\_\_

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## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on June 16, 2003 has been entered.

### ***Response to Amendment***

2. This Office action is in response to the amendment and arguments filed with the request for continued examination (see above) on June 16, 2003.

3. Claims 1, 3, 4, and 6 through 15 remain in the application.

### ***Response to Arguments***

4. Applicant's arguments with respect to the claims have been considered but are moot in view of the new ground(s) of rejection.

Applicant is nevertheless respectfully reminded that claims in a pending application should be given their broadest reasonable interpretation. *In re Person*, 181 USPQ 641 (CCPA 1974).

Applicant is also respectfully reminded that claims directed to apparatus must be distinguished from the prior art in terms of structure rather than function. *In re Danly*, 263 F.2d 844, 847, 120 USPQ 528, 531 (CCPA 1959). Also, "[A]pparatus claims cover what a device

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*is*, not what a device *does*. (Emphasis in original). Hewlett-Packard Co. v. Bausch & Lomb Inc., 909 F.2d 1464, 1469 15 USPQ2d 1525, 1528 (Fed. Cir. 1990).

***Information Disclosure Statement***

5. As noted below in greater detail, the examiner has found a number of recently issued United States patents which have inventors and/or assignees in common with the instant application, and which also disclose inventions related to the instant invention. Applicant is hereby requested to provide a complete list of all similarly related pending applications and recent patents to ensure compliance with full disclosure requirements.

***Specification***

6. Receipt and entry of the amended abstract is hereby acknowledged.

***Claim Objections***

7. Claim 7 is objected to because of the following informalities: “fro” [claim 7, line 2] should be replaced with “from” if appropriate. Appropriate correction is required.

***Claim Rejections - 35 U.S.C. § 112***

8. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

9. Claims 1, 3, 4, and 6 through 15 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

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Each of base claims 1 and 4 recites both an apparatus (the front end structure of an automobile) and a method of using and/or making the apparatus (i.e., “the fan unit is inserted into the front end structure from the rear end of the automotive vehicle” appearing at the end of each of claims 1 and 4), thus making these claims and all claims depending therefrom indefinite for failing to positively recite the metes and bounds of protection sought.

Upon reconsideration, the limitations “wherein said front end panel is *integrally formed with a first air path* for leading the air that has passed through said radiator into the engine compartment, and a second air path for leading the air that has passed through said radiator out of the engine compartment” as recited in each of claims 3 and 6 are not clear as written because it appears to recite that a structural element is integrally formed with a non-structural element-- i.e., with an air flow path, which does not necessarily have any structure associated with it.

There is insufficient antecedent basis for the limitation “the duct structure” [claim 12, line 1]. If this refers to the “duct structural member recited in claim 4 from which claim 12 depends, then this is merely an informality and “the duct structure” in claim 12 should be replaced with “the duct structural member”, for example. If, however, this limitation refers to some other element, then claim 12 is rendered indefinite thereby.

***Claim Rejections - 35 U.S.C. § 101***

10. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

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11. Claims 1, 3, 4, and 6 through 15 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. Each of base claims 1 and 4 recites *both* an apparatus (the front end structure of an automobile) *and* a method of using and/or making the apparatus (i.e., “the fan unit is inserted into the front end structure from the rear end of the automotive vehicle” appearing at the end of each of claims 1 and 4).

***Claim Rejections - 35 U.S.C. § 103***

12. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

13. As best can be understood in view of the indefiniteness of the claims, claims 1, 3, 4, and 6 through 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over *Latcau* (*filed July 30, 1999*) in view of *Daimler-Benz AG (DE 36 30 646C1, of record)* or, alternately, in view of *Nissan Shatai Co. Ltd. (JP Publication No. 01109182A, of record)*.

*Latcau* discloses a modular vehicle front end structure essentially as claimed, including a plastic or resinous front end structure or assembly 1 essentially as claimed, including horizontally extending beams or portions 131 [see Figure 1] as well as a cooling apparatus 50 fixed directly to the front end structure or assembly 1, where the cooling apparatus 50 is insertable into the front end structure or assembly 1 from the rear end of the vehicle [see Figure 2]. *Latcau* also discloses

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integrating various additional elements (such as a fan shroud) into the front end structure or assembly 1 front end panel [see column 2, lines 28-29; also, column 4, lines 27-28], although, in general, absent the disclosure of unexpected results, simply making a structure integral is not inventive anyway. See *In re Larson*, 144 USPQ 347 (CCPA 1965).

Regarding the cooling apparatus 50, *Latcau* notes that the cooling apparatus 50 “typically comprises an engine cooling radiator, a condenser for an air conditioning and/or an oil cooler, together with a fan, fan motor and shroud” [see column 3, lines 58-60]. While *Latcau* does not provide specifics regarding the relative location of the aforementioned elements which typically comprise the cooling apparatus 50, it is hereby noted that, absent unexpected results resulting therefrom, it is an obvious matter of design choice and not inventive to shift the relative location of parts, such as the relative location of the radiator, condenser, and fan within the cooling apparatus 50. See *In re Japikse*, 86 USPQ 70 (CCPA 1950). Furthermore, it is well-known in the art and taught by each of *Daimler-Benz AG* and *Nissan Shatai Co. Ltd.* to specifically dispose a fan forward or upstream of the radiator and condenser or other heat exchange within a front end structure assembly in order to, for example, increase the distance between the coolant-carrying radiator and the front bumper of the car to therefore reduce damage to the radiator and the coolant system in the case of a front-end collision.

Thus it would have been obvious to one skilled in the art at the time of invention to modify the front end structure or assembly 1 of *Latcau* by specifically disposing the fan forward or upstream of the radiator and condenser in the front end structure or assembly as taught by each

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of *Daimler-Benz AG* and *Nissan Shatai Co. Ltd.* in order to minimize coolant system damage resulting from minor front-end collisions, for example.

### ***Conclusion***

14. The following additional prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

*Steiger, Struss et al., Schwerzler et al., Schaal et al., Charles, Shimazaki, Acre et al., Bierjon et al., Guyomard et al., Takahashi, Hateley, and Balzer et al.* each discloses some type of vehicular cooling and/or front end modular assembly.

*Ozawa et al. (both references), Sasano et al. (all three references), and Miyata* all have inventors and/or assignees in common with the instant application, with each disclosing a related invention to the instant invention.

*Case* (filed January 8, 2002) discloses a particularly relevant front end modular assembly which does not constitute prior art.

15. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ljiljana (Lil) V. Ciric, whose telephone number is (703) 308-3925. While she works a flexible schedule that varies from day to day and from week to week, Examiner Ciric may generally be reached at the Office during the work week between the hours of 10 a.m. and 6 p.m. ET.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Henry Bennett, can be reached on (703) 308-0101. The fax phone number is (703) 305-3463.



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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-0861.

lvc

June 28, 2003

  
LJILJANA V. CIRIC  
PRIMARY EXAMINER  
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